

CHAPTER I

INTRODUCTION

A. BACKGROUND

Corruption Eradication Commission (KPK) has caught the chairman of Constitutional Court Akil Mochtar red-handed on October 02, 2013. Akil was arrested by KPK in his official home on accusation of bribery case relating to the dispute of Local Election of Gunung Mas district, Central Borneo Province and Lebak District, Banten Province.¹

The settlement of dispute of local election is one of the Constitutional Court authorities. In fact the authority was abused by Akil Mochtar as a Constitutional Court Judge. Akil made in this case as a business to enrich himself, his family and group. It is not only that, on October 03, 2013 when KPK doing shakedown of Constitutional Court building, KPK investigator also found narcotic and drugs in his office. National Narcotic Body (BNN)² was doing the laboratory test to the narcotic which is found in Akil Mochtar's office, and the result is positive. It is means that Akil as the owner of the drug.³

¹After the enactment of Law No. 12 of 2008 was amendment by Law No. 32 of 2004 on Local Government. Article 236C stated that: Handling disputes of local election results in vote counting transferred from Supreme Court to the Constitutional Court no later than 18 (eighteen) months from the law enacted.

²BNN is the Ministry of Non-Government Institutions (LPNK) Indonesia, which has duties of carrying out government duties in the field of prevention, eradication abuse and illicit traffic in psychotropic substances, precursors, and other addictive ingredients except for the addictive ingredient of tobacco and alcohol. The legal basis of BNN is Law No. 35 of 2009 on Narcotics.

³Kedaulatan Rakyat, October 07, 2013.

However, because this case on October 05, 2013 after held meeting with some chairman of high level state institutions, President Republic Indonesia Susilo Bambang Yudhoyono dismiss Akil Mochtar as a Chairman of Constitutional Court. As a follow up of government, on October 17, 2013 Susilo Bambang Yudhoyono signs Government Regulation In-Lieu-of-Law (PERPPU) No. 1 of 2013, as the Second Amendment of Law No. 24 of 2003 on Constitutional Court.⁴

The consideration of the government regulation is effort to restore public confidence in Constitutional Court as the state institution which is runs the function of enforce the 1945 Constitution. Therefore it is necessary to amend Law No. 24 of 2003 on Constitutional Court for second time.⁵ Particularly the provisions related with requirement, selection method, and submission candidate of Constitutional Court judges, the regulation stated the establishment of Constitutional Court of Honorary Council (MKHK)⁶.

The government regulation is clearly mentioned that Constitutional Court has to be supervised by other institution outside of Constitutional Court. The Honorary Council has an authority to call the judges of Constitutional Court who are suspected doing the violations. The judges suspected may deliver the explanation and defense; call the reporter, witness, and other parties which is concern to ask for information, also ask for the document or other evidence.

⁴Kedaulatan Rakyat, October 06, 2013.

⁵It is amended by Law No. 8 of 2011 about Second Amendment of Law No. 24 of 2003 on Constitutional Court.

⁶MKHK is an institution created by Constitutional Court and Judicial Commission to preserve the

Likewise, the council also may give the punishment to the Constitutional Court Judges who are proven violated the ethic code.

The government reasons to the Government Regulation In-Lieu-of-Law related to Constitutional Court based on the effort to rescue authority of the Constitutional Court. In the Government Regulation there are three main substances⁷, namely:⁸

1. *First*, to be judges of Constitutional Court, person is not a member of a political party a minimum of seven years before it proposed as a candidate for a judge Constitution.
2. *Second*, clarify the mechanism of the selection process and the submission of Constitutional Court.
3. *Third*, improvement of supervision system of the Constitutional Court will be more effective through the establishment of the permanent Constitutional Court of Honorary Council (MKHK) which is created by Constitutional Court and Judicial Commission. The members of council are five persons, namely: one of a former Constitutional Judge, a legal expert, and two academics who either one or both of them as a law background, and a public figure.

On December 19, 2013 the Government Regulation in-Lieu-of-Law No. 1 of 2013 was legalized as a Law No. 4 of 2014 by the House of Representatives

⁷Kedaulatan Rakyat, October 18, 2013.

⁸<http://www.tempo.co/read/news/2014/02/13/063553896/MK-Batalkan-Undang-Undang-Pengawas-MK> accessed on March 06, 2014.

(DPR) in a plenary session. The decision was agreed by voting mechanism. This mechanism taken after the voice of Fractions III in DPR previously similar, so the decisions have to be taken by voting mechanism. The reason of the House of Representatives to legalize the government regulations becoming law is the same reason with the government in an effort to rescue the prestige of the Constitutional Court.⁹

Ironically, the Government Regulation in-Lieu-of-Law which is already legalized by DPR as a Law No. 4 of 2014 was nullified by the Constitutional Court which proposed by some lawyers. Those lawyers think that the law against the 1945 Constitution. The 1945 Constitution does not delegate Judicial Commission (KY) in supervising Constitutional Court Judges. The judicial review also proposed by some lectures of Law Faculty, Universitas Jember. They also question the involvement of the Judicial Commission in the establishment of Constitutional Court Honorary Council (MKHK).¹⁰

The Constitutional Court decision which is announced publicly on February 13, 2014 by Chairman of Constitutional Court Hamdan Zoelva stated that Constitutional Court received the judicial review Law No. 4 of 2014 about determining Government Regulation in-Lieu-of-Law No. 1 of 2013 about Second Amendment of Law No. 24 of 2003 on Constitutional Court. The consequence of this decision is there will be no institution which supervises the Constitutional

⁹<http://www.tribunnews.com/nasional/2013/12/20/sby-apresiasi-dpr-sahkan-perppu-mk-jadi-uu> accessed on March 05, 2014.

¹⁰<http://www.tribunnews.com/nasional/2014/02/13/mahkamah-konstitusi-batalkan-uu-mk> accessed

Court Judges. Law No. 4 of 2014 mandated MKHK create by Constitutional Court and Judicial Commission (KY) as an institution which establishes the supervisory for Constitutional Court was nullified and cannot enter into force any more.

Relating to this decision, some experts critically comments that the decision of the Constitutional Court is not fair. Refly Harun for instance, opined that the Constitutional Court did not give a chance to the House of Representatives or Government to provide information orally and bring expert witnesses to strengthen the rules. He also stated that the Constitutional Court should not nullify the entire of article of the Act. The judges can focus only the issue of Judicial Commission.¹¹

President Susilo Bambang Yudhoyono also stated that state institution in every level must be exercised with supervision to make sure the power exercised in line with 1945 Constitution and Laws. Every power must be supervised. It is like a President must be supervised by other institution. In Indonesia, if we want to establish a good political party, it must be supervised, because if there is no supervision it will be easy to be abuse of power.¹² Similar to the President, another expert of constitutional law, Yusril Ihza Mahendra also stated that it is impossible for state institution without having any supervision. He further argues that there is assumption that the Constitutional Court want to be a super institution, therefore all of laws which try to control the Constitutional Court

¹¹http://www.portalkbr.com/berita/nasional/3133762_4202.html accessed on March 06, 2014.

¹²Kedaulatan Rakyat, October 06, 2013.

would be nullified by the Constitutional Court judges as like as happen from Jimly Asshiddiqie era as a Chairman.¹³

Theoretically and practically, supervision is absolutely necessary in establishing a good and trustable institution of judicial power. Based on the 1945 Constitution, the judges are supervised by the Judicial Commission. Judicial Commission is one institution which is given authority by the 1945 Constitution to supervise all of judges in every level, including Supreme Court and Constitutional Court judges.¹⁴

However, in 2006, the some judges of Supreme Court brought petition to the Constitutional Court to review the Law No. 22 of 2004 on Judicial Commission. In its decision No. 005/PUU-IV/2006 the Constitutional Court nullified the authority of the Judicial Commission in supervising the Constitutional Court judges. In addition, in 2014 after legalized of Law No. 4 of 2014 about second amendment of Law No. 23 of 2004 on Constitutional Court which emphasis the supervision through MKHK nullified again by Constitutional Court.

The untouchable of Constitutional Court from supervision is a problem which has to be resolve. If it does not solve and change quickly, it worries that another judges and staff would be next suspect of bribery. Indonesian Researcher Legal Roundtable (ILR) Erwin Notosmal Oemar stated that, we must solve the problem and change the law which is regulated the Constitutional Court to

¹³ Kedaualatan Rakyat, October 07, 2013.

¹⁴ Article 23B Paragraph 1, the 1945 Constitution

achieve the good and trustable institution in the Constitutional Court. He explained that the implication of the decision is the Constitutional Court judges was not the object of supervision of Judicial Commission. He further comments that this situation is dangerous and should be overcome soon.¹⁵

Good, clean and trustable institution is the hope of every people in Indonesia. In relation to that it is interesting and important to study more about the urgency of supervision of Constitutional Court judges in establishing a trustable court in Indonesia.

B. RESEARCH QUESTION

Based on the background, it can be formulated a research problem: What is the urgency and importance of external supervision of Constitutional Court judges by other state institutions outside of Constitutional Court?

C. OBJECTIVE OF RESEARCH

The purpose of the study is to understand the importance of supervision of state organs and to convince the urgency of the supervision of the Constitutional Court judges in establishing a trustable court in Indonesia.

D. THE BENEFITS OF THE RESEARCH

1. Theoretically

The research will give more understanding on the importance of the

2. Practically

The research will suggest and convince the policy maker to formulate the model of supervision of Constitutional Court judges in the light of establishing a trustable court in Indonesia.

E. OVERVIEW OF THE CHAPTERS

This research consists of five chapters, namely: Chapter I Introduction, Chapter II Literature Review, Chapter III Research Methods, Chapter IV Discussion, Chapter V Conclusion and Suggestion.

The aim of this research is to learn more about the urgency of supervision of Constitutional Court judges in establishing a trustable court in Indonesia.

1. Chapter I: The researcher try to explain the dispute of criminal court of judges without supervision like the Akil Mochtar case and how important supervision to control the judges of Constitutional Court. Chapter I also discuss on the objectives of the research and the benefit of the research.
2. Chapter II: In Chapter II will explain about the theory of constitution, Constitutional Court regarding on history, position, authority and obligation of Constitutional Court. Chapter II also explains the theory of supervision and trustable court.
3. Chapter III: In Chapter III will discuss about the research methods which used on the research. This research method consists of type of research, the data, technique of collecting data, and analysis. Type of this research is a normative legal research. Also this research will use material

secondary legal material, and tertiary legal material. Then, the methods of collecting data in this research will be conducted through library research and will be analyzed systematically through qualitative method.

4. Chapter IV: In Chapter IV will explain analysis about the urgency of supervision of Constitutional Court judges in establishing a trustable court in Indonesia.
5. Chapter V: Chapter V consists of conclusion and suggestion regarding the urgency of supervision of Constitutional Court judges in establishing a trustable court in Indonesia.